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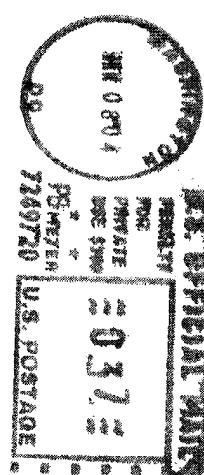
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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/402,737	10/08/1999	DIETER NEUSER	BAYER10197	6345
7590	02/12/2004		EXAMINER	
NORRIS MCLAGHLIN & MARCUS, P.A. ATTONEYS AT LAW 660 WHITE PLAINS ROAD TARRYTOWN, NY 10591-5144			GEORGE, KONATA M	
			ART UNIT	PAPER NUMBER
			1616	

DATE MAILED: 02/12/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	Application No.	Applicant(s)
	09/402,737	NEUSER ET AL.
	Examiner Konata M. George	Art Unit 1616

— The MAILING DATE of this communication appears on the cover sheet with the correspondence address —  
Period for Reply

**A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.**

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If no period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) Responsive to communication(s) filed on 24 November 2003.
- 2a) This action is FINAL.      2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) Claim(s) 1-28 is/are pending in the application.
  - 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) Claim(s) 10,11,14 and 28 is/are allowed.
- 6) Claim(s) 1-4,8,9,12,13,15-18,20,22 and 23 is/are rejected.
- 7) Claim(s) 5-7, 19, 21 and 24-27 is/are objected to.
- 8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on \_\_\_\_\_ is/are: a) accepted or b) objected to by the Examiner.
 

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
  - a) All    b) Some \*    c) None of:
    1. Certified copies of the priority documents have been received.
    2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
    3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) Notice of References Cited (PTO-892)
- 2) Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_
- 4) Interview Summary (PTO-413)  
Paper No(s)/Mail Date \_\_\_\_\_
- 5) Notice of Informal Patent Application (PTO-152)
- 6) Other: \_\_\_\_\_

### **DETAILED ACTION**

Claims 1-28 are pending in this application.

#### ***Action Summary***

1. The rejection of claims 16-27 under 35 U.S.C. 112, second paragraph as being indefinite is hereby withdrawn as applicant has defined "Element A" and "Element B".
2. The rejection of claims 1-4, 8, 9, 12, 13, 15-18, 20, 22 and 23 under 35 U.S.C. 102(a) as being anticipated by Desai is being maintained for the reasons stated in the previous office action.

#### ***Response to Arguments***

3. Applicant's arguments filed November 24, 2003 have been fully considered but they are not persuasive.

Applicant argues that Desai does not teach elements A and B comprise two different analgesic compounds. Applicants argue that Desai does not teach combining distinct analgesic compounds and combining a locally acting analgesic and a systemically acting analgesic. It is the position of the examiner that Desai does teach the invention as claimed. Examiner wants to point out to the applicant that the claim was amended to read that element A and B are different chemical compounds, not different analgesic compounds. It is the position of the examiner that naproxen and naproxen sodium are different chemical compounds. Furthermore, it is taught that one acts in an immediate release rate which can be interpreted as having local onset of

action while the other is delayed release which can be interpreted as having systemic onset of action. Thus, Desai reads on the claimed invention.

***Allowable Subject Matter***

4. Claims 10, 11, 14 and 28 are allowed.
5. Claims 5-7, 19, 21, and 24-27 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

***Conclusion***

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

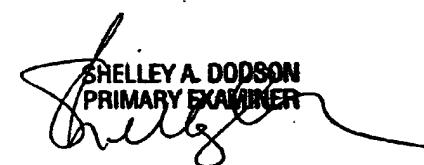
***Telephone Inquiries***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Konata M. George, whose telephone number is (571) 272-0613. The examiner can normally be reached from 8AM to 5:30PM Monday to Thursday, and on alternate Fridays.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Thurman Page, can be reached at (571) 272-0602. The fax phone numbers for the organization where this application or proceeding is assigned are (703) 308-4556 for regular communications and for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-1235.

Konata M. George

  
SHELLEY A. DODSON  
PRIMARY EXAMINER